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The SUPERB Advisory Committee 2010 Annual Report

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SUPERB ADVISORY COMMITTEE

2010 Annual Report

Purpose

This report is submitted to the General Assembly and the Department of Health and Environmental Control (DHEC) in order to fulfill the requirements of Title 44, Chapter 2 of the 1976 South Carolina Code of Laws, as amended. Specifically, Section 44-2-150(G) of the State Underground Petroleum Environmental Response Bank (SUPERB) Act requires the SUPERB Advisory Committee (the Committee) to submit an annual report that addresses the financial status and viability of the SUPERB Account and the SUPERB Financial Responsibility Fund (SFRF), the number of sites successfully remediated, the number of sites remaining to be remediated, and any statutory or regulatory changes the Committee recommends. In addition, this report contains information regarding the current status of the underground storage tank (UST) population in South Carolina.

The SUPERB Accounts

Federal regulations (enacted in 1988) require UST owners or operators to demonstrate financial responsibility for corrective action and third party liability at \$1,000,000 per leak occurrence. The South Carolina General Assembly created the SUPERB Account in 1988 to assist UST owners and operators in meeting the corrective action portion of the federal financial responsibility requirements, and the SFRF was legislatively created in 1993 to assist owners and operators in meeting the third party liability requirement. UST owners and operators are responsible for a \$25,000 deductible per UST leak occurrence and they remain liable for costs above \$1,000,000.

A ½ cent environmental impact fee imposed on each gallon of petroleum entering the state funds the SUPERB Accounts. The Department of Revenue collects the fee under the authority of Section 12-28-2355. Impact fee revenue received during calendar year 2010 totaled \$17,681,220.27 and the total revenue received including impact fee revenue, interest, and recovered funds totaled \$18,400,014.93. (Table 1). SUPERB payments during calendar year 2010 totaled \$22,134,031.82. As of December 31, 2010, a total of \$16,289,837.52 in SUPERB funds is committed through current contracts for site rehabilitation activities leaving an available SUPERB balance of \$218,873.25 (Table 1). The cumulative expenditures since 1998 total \$317,554,434.77.

Table 1. SUPERB Account information as of December 31, 2010

Impact Fee Revenue Received in Calendar Year 2010	\$ 17,681,220.27
Beginning Cash Balance January 1, 2010	\$ 21,612,206.80
Total Revenue Received in Calendar Year 2010	\$ 18,400,014.93
Total Available Calendar Year 2010	\$ 40,012,221.73
Total Payments from SUPERB in Calendar Year 2010	\$ -22,134,031.82
Cash Balance December 31, 2010	\$ 16,508,710.77
Commitments (Current Contracts)	\$ -16,289,837.52
Available for Commitment	\$ 218,873.25
Cumulative Spent Since 1988	\$ 317,554,434.77

SUPERB Financial Responsibility Fund (SFRF)

DHEC is currently aware of 16 third party claims or suits and actively participates in their resolution as allowed for in Section 44-2-40 of the SUPERB Act. One claim was paid in 2010 totaling \$95,000. A total of \$1,194,017.84 has been spent for claims, legal fees, and appraisal activities since the creation of this fund in 1993. As of December 31, 2010 the SFRF Balance was \$956,396.71.

Financial Responsibility for the State Fund Deductible

The SUPERB Act requires that UST owners and operators demonstrate financial responsibility (FR) for \$25,000 per UST leak occurrence as the SUPERB Accounts provide the remaining required coverage. Allowable FR options include: self insurance, commercial insurance, insurance pool (risk retention group), guarantee, surety bond, letter of credit, trust fund, standby trust fund, and several local government options. Currently, sixty-five percent (65%) of UST facilities are covered by self-insurance, twenty percent (20%) by letters of credit or surety bonds, thirteen percent (13%) by commercial insurance, one-percent (1%) by local government options, and the remaining one-percent (1%) are exempt, in violation, or new owners.

Cleanup Progress

As of December 31, 2010, DHEC has confirmed a total of 9,465 UST releases. Of these, 6,683 or about 71% have been closed. A total of 252 releases were closed in calendar year 2010; of these, 138 were closed with SUPERB funds. Sixteen of the 252 closures required engineered cleanup systems and were closed after cleanup actions were completed. Cleanups requiring engineered systems, often referred to as active cleanups, can take more than five years to complete.

At year's end, there were 2,782 open releases, of which 2,739 are eligible to receive SUPERB funds. Confirmed releases are ranked by DHEC for funding priority according to the risk each poses and the priority system is outlined in the SUPERB Fund Access Regulations (R.61-98). Appendix 1 of this report depicts the total number of SUPERB eligible releases by their risk category and Appendix 2 depicts this number by county. Appendix 3 depicts the number of cases, by risk category, where rehabilitation activity is being funded and the number where no funding is provided.

As of December 31, 2010, 204 releases were in active cleanup, 270 releases were being monitored as part of a formalized natural attenuation remedial plan, and assessment activities were being funded at another 855 sites. A total of 1,329 releases were receiving SUPERB funding at year's end. For the most part, site rehabilitation activities are funded by SUPERB or by the UST owner under the \$25,000 SUPERB deductible.

At year's end, fifteen (15) DHEC project managers were overseeing environmental assessment or cleanup efforts on 1,979 releases being worked with SUPERB funds or under the \$25,000 deductible. One of the fifteen project manager positions was vacated on January 3, 2011, and the Division is seeking approval to fill the vacancy in the Corrective Action Section so that productivity is not limited. This is especially

important as, during calendar year 2010, the proportion of releases in the Assessment Section decreased significantly while the proportion of releases in the Corrective Action Section increased. The Corrective Action Section is now responsible for providing oversight of 57% of the active release population. The Director position within the Division of Underground Storage Tank Management became vacant on January 17, 2011 and permission to post this critical vacancy is a priority for the Bureau of Land and Waste Management.

Underground Storage Tank Information

Since 1986, there have been 45,469 petroleum USTs registered with DHEC. Of those, 32,814 have been removed from the ground or properly closed in place. As of December 31, 2010, there were 11,771 operating USTs at 4,156 locations across the state owned by 2,093 individuals or companies.

The U.S. Environmental Protection Agency (EPA) requires DHEC to report on a quarterly basis the UST compliance rate for both release prevention and release detection, commonly referred to as significant operational compliance. DHEC reported that 77% of the approximately 4,034 UST facilities inspected during 2010 met both the release prevention and release detection requirements and were in significant operational compliance. The overall compliance rate for 2010 has increased by 1% from the previous year's report of 76%. The Committee encourages UST owners and operators, as well as DHEC, to provide greater emphasis on release prevention and early detection so as to minimize the number of new releases and their severity when they do occur. Prevention measures are in the best interest of owners and operators, the environment, and the SUPERB Fund.

Leak Rate

The leak rate from registered and permitted tanks was less than 1% at 0.82% for 2010. This leak rate is lower than the 0.98% rate reported last year for 2009.

Legislative Information

An actuarial study of the SUPERB fund, completed in March 2007, listed the current liabilities of the fund at \$153 million and estimated future liabilities at \$373 million. The fund was projected to have a negative balance of \$32 million at the scheduled sunset date in 2026. The EPA has voiced concerns about solvency of the SUPERB fund since the late 1990's in mid-year and year-end grant reviews provided to DHEC, and in September of 2007 DHEC received official notice from EPA Region IV that the SUPERB Fund is in danger of being declared insolvent. The result of insolvency would be the disapproval of the SUPERB fund as an accepted financial responsibility mechanism, requiring UST owners and operators to obtain alternate coverage for their required minimum of \$1 million in liability coverage to pay for cleanup and third party damage claims, per occurrence.

DHEC consulted with South Carolina Petroleum representatives and ultimately developed a funding solution with EPA Region 4, EPA Headquarters Office of Underground Storage Tanks, and the SUPERB Advisory Committee. The solution proposed in October 2007 was to acquire an additional \$8 million per year over five years to move the SUPERB Fund toward being a viable financial responsibility mechanism.

This \$40 million was in addition to the \$5 million special appropriation received in November 2007 for state FY 2008. During 2008, the petroleum industry was successful in securing an additional \$4 million for the SUPERB Fund above the expected impact fee revenue; therefore, the SUPERB funding solution as proposed in October 2007, required an additional \$36 million. In January 2009, Bill H. 3270 was introduced through industry-led efforts to address SUPERB solvency by amending Section 44-2-60 Code of Laws of South Carolina, relating to the registration of underground storage tanks so as to establish new annual renewal fees and to require that the additional revenue generated from the tank fee increases be deposited into the SUPERB account. Bill H.3270 was signed by the Governor and made effective on May 19, 2010.

Beginning January 1, 2010, the amended SUPERB Act increases annual tank fees \$100 each year over four years, ultimately reaching \$500 per tank, and maintains the fee at this level until an additional \$36 million is generated and deposited into the SUPERB account. When the SUPERB account is credited with the additional \$36 million, the annual tank fee will revert back to \$100 per tank the following January. DHEC will not be allowed to use any of the additional tank fee revenue for administration of the UST Program or for orphan sites as defined in 44-2-20(11).

Considering the recent budget challenges faced by South Carolina, DHEC views this industry-led effort as a resolution to the long-term funding solution for the SUPERB account. In recent correspondence, the EPA fully endorsed the funding solution incorporated in the 2010 legislation to address the solvency of SUPERB.

Operator Training

Operator training has been implemented and to date approximately 32% of facilities in South Carolina have a trained operator. The Operator Training Plan was published August 8, 2009 and training must be completed by owners/operators by August 8, 2011. The owners were sent information packets about the free online training the Department offers and the due date for having a trained operator. Several articles related to the operator training requirements have been published in DHEC UST Newsletters in an additional effort to inform tank owners. On March 1, reminder postcards will be mailed to tank owners that have not completed the required training and within 60 days of the August 8 deadline, a final reminder will be sent. After the deadline, a NOAV (Notice of Alleged Violation) will be sent with a 30 day due date. In the case where there is no response to the NOAV, a Delivery Prohibition letter with a 15 day due date will be sent. If compliance is not achieved, the tanks will have a red Delivery Prohibition tag affixed to the fill port until the compliance matter is resolved.

Recommendations

The Committee urges the petroleum industry to increase their outreach efforts to tank owners to increase awareness of the operator training requirement and deadline of August 8, 2011.

Appendix 1

SUPERB Eligible Releases by Risk Category As of January 4, 2011

Risk Category	Open Releases
1	190
2A	128
2B	912
3A	64
3B	948
4A	188
4B	145
5	148
Total	2,723

Risk Category Definitions:

- Category 1 Emergency
- Category 2A Threat to human health or environment is predicted to be less than 1 year
- Category 2B Drinking well identified less than 1,000 feet away
- Category 3A Threat to human health or the environment is predicted to be 1 to 2 years
- Category 3B Release in shallow groundwater with migration expected
- Category 4A Threat to human health or the environment is predicted to be greater than 2 years
- Category 4B Release in shallow groundwater with minimal migration expected
- Category 5 Data currently inconclusive

Appendix 2

SUPERB Eligible Releases by Risk Category and County as of January 12, 2011

County	Risk Category								Total
	1	2A	2B	3A	3B	4A	4B	5	
Abbeville	3	1	13	1	4	0	2	2	26
Aiken	3	0	17	1	7	3	2	9	42
Allendale	1	1	3	0	9	0	2	2	18
Anderson	0	0	19	1	41	8	5	5	79
Bamberg	2	1	10	0	6	1	2	0	22
Barnwell	2	4	13	2	6	1	0	2	30
Beaufort	2	2	11	3	9	1	0	0	28
Berkeley	2	0	20	1	25	0	1	0	49
Calhoun	0	0	0	0	4	0	2	0	6
Charleston	0	3	17	0	88	0	3	3	114
Cherokee	1	1	11	0	11	2	2	2	30
Chester	6	2	18	0	9	2	3	5	45
Chesterfield	0	2	8	1	9	1	1	2	24
Clarendon	4	1	28	2	19	0	4	4	62
Colleton	1	3	15	1	10	0	0	0	30
Darlington	3	1	25	2	17	1	6	2	57
Dillon	9	2	12	1	12	0	4	1	41
Dorchester	3	3	20	1	24	0	2	0	53
Edgefield	1	0	5	1	3	0	2	4	16
Fairfield	5	1	9	0	1	0	1	0	17
Florence	10	9	61	2	65	2	16	1	166
Georgetown	2	5	16	3	18	0	0	2	46
Greenville	7	11	55	3	52	42	19	25	214
Greenwood	4	1	18	1	6	9	4	4	47
Hampton	0	3	13	0	10	0	2	4	32
Horry	11	9	58	13	84	0	3	16	184
Jasper	5	3	21	1	8	0	0	1	39
Kershaw	0	4	13	1	10	3	1	3	35
Lancaster	3	2	25	4	18	7	9	5	73
Laurens	4	0	20	0	16	12	0	1	53
Lee	1	3	5	0	2	1	0	2	14
Lexington	8	1	39	2	43	5	9	14	121
Marion	2	0	30	1	27	0	0	1	61
Marlboro	5	2	16	0	12	1	1	1	38
McCormick	1	0	7	0	6	1	0	0	15
Newberry	2	3	17	0	16	3	5	2	48
Oconee	1	1	8	0	4	6	0	0	20
Orangeburg	8	7	31	2	32	1	4	2	87
Pickens	1	0	7	0	5	7	2	0	22
Richland	20	5	38	0	52	12	4	1	132
Saluda	3	1	1	0	10	0	2	0	17
Spartanburg	10	2	37	8	65	44	16	16	198
Sumter	7	12	36	2	23	0	1	4	85
Union	1	3	1	0	5	0	0	2	12
Williamsburg	5	7	23	1	16	0	2	4	58
York	23	5	43	1	31	10	3	5	121

Risk Category Definitions:

Category 1	Emergency
Category 2A	Threat to human health or environment is predicted to be less than 1 year
Category 2B	Drinking well identified less than 1,000 feet away
Category 3A	Threat to human health or the environment is predicted to be 1 to 2 years
Category 3B	Release in shallow groundwater with migration expected
Category 4A	Threat to human health or the environment is predicted to be greater than 2 years
Category 4B	Release in shallow groundwater with minimal migration expected
Category 5	Data currently inconclusive

Appendix 3

SUPERB Eligible Releases by Risk Category Work Ongoing or Not Currently Working As of January 4, 2011

Risk Category	Work Currently Ongoing With SUPERB Funds or Under the \$25,000 Deductible	Not Currently Working Awaiting SUPERB Funding
1	190	0
2A	92	36
2B	551	361
3A	34	30
3B	322	626
4A	68	120
4B	37	108
5	71	77
Total	1365	1358

Risk Category Definitions:

Category 1 Emergency

Category 2A Threat to human health or environment is predicted to be less than 1 year

Category 2B Drinking well identified less than 1,000 feet away

Category 3A Threat to human health or the environment is predicted to be 1 to 2 years

Category 3B Release in shallow groundwater with migration expected

Category 4A Threat to human health or the environment is predicted to be greater than 2 years

Category 4B Release in shallow groundwater with minimal migration expected

Category 5 Data currently inconclusive